This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/29/01.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
MARVIN PEREZ,	)	
	)	
Complainant,	)	
	)	**Charge No.: 1999CF2189**
and	)	**EEOC No.: 21B991601**
	)	**ALS No.: 11432**
STATE OF ILLINOIS, DEPARTMENT OF HUMAN SERVICES,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On December 15, 2000, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Marvin Perez. That complaint alleged that Respondent, State of Illinois, Department of Human Services, retaliated against Complainant because of his good faith opposition to unlawful discrimination.

This matter now comes on to be heard on Respondent's Motion to Dismiss. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The matter is now ready for decision.

FINDINGS OF FACT

The following findings are based upon the record file in this matter. For purposes of Respondent's Motion to Dismiss, all well-pleaded facts were taken as true.

1. Respondent, State of Illinois, Department of Human

Services, hired Complainant, Marvin Perez, on or about May 6, 1998. Complainant's position was Recreation Worker I.

2. On or about July 12, 1999, Respondent gave Complainant a performance evaluation which rated him as "needs improvement" in the category of human relations.

3. Complainant maintains that his human relations rating was done in retaliation for his good faith opposition to unlawful discrimination by Respondent.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent is a "person" as defined by section 1-103(L) of the Act and is subject to the provisions of the Act.

3. Complainant's performance rating was not sufficiently severe to qualify as an adverse employment action.

4. The complaint in this matter does not state a claim on which relief can be granted.

5. The complaint in this matter should be dismissed with prejudice.

DISCUSSION

Respondent, State of Illinois, Department of Human Services, hired Complainant, Marvin Perez, on or about May 6, 1998. Complainant's position was Recreation Worker I. On or about July 12, 1999, Respondent gave Complainant a performance

evaluation, which rated him as "needs improvement" in the category of human relations.

Subsequently, Complainant filed a charge of discrimination against Respondent. That charge alleged that Complainant's human relations rating was done in retaliation for his good faith opposition to unlawful discrimination by Respondent.

To establish a *prima facie* case of retaliation, Complainant must prove three elements. He must prove 1) that he engaged in a protected activity, 2) that Respondent took an adverse action against him, and 3) that there was a causal nexus between the protected activity and Respondent's adverse action. ***Carter Coal Co. v. Human Rights Commission***, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994). Respondent argues that the case should be dismissed because, as a matter of law, the action alleged by Complainant is not an adverse action. Thus, according to Respondent, Complainant cannot establish his case.

To qualify as an "adverse action," Respondent's action must be sufficiently pervasive or severe to constitute a term or condition of employment. If it fails to meet that standard, it cannot give rise to a cause of action under the Act. ***Campion and Blue Cross and Blue Shield Ass'n***, ___ Ill. HRC Rep. ___, (1988CF0062, June 27, 1997).

In ***Canady and Caterpillar, Inc.***, ___ Ill. HRC Rep. ___, (1994SA0027, February 6, 1998), the Human Rights Commission found that giving an employee a lower ratio production rating in a

performance evaluation was not an adverse action in a retaliation situation. In reaching that conclusion, the Commission relied upon precedent from the Seventh Circuit Court of Appeals. The Seventh Circuit specifically found that a lowered performance evaluation, by itself, was not an adverse action in ***Smart v. Ball State University***, 89 F.3d 437 (7th Cir. 1996.) The court reached the same conclusion in ***Rabinovitz v. Pena***, 89 F.3d 482 (7th Cir. 1996), despite the fact that the plaintiff in ***Rabinovitz*** lost a $600.00 bonus as a result of the lower evaluation. Thus, under the precedent from both the Commission and the Seventh Circuit, it is clear that the act alleged by Complainant is not an adverse action. Without an adverse action, Complainant simply cannot establish his *prima facie* case.

Complainant's arguments that the evaluation change adversely affected his future job prospects are based solely on conjecture and speculation. There is no indication in the complaint, or even in his arguments, that he has applied for or been rejected for any particular job. Moreover, there is no indication that he has actually suffered any loss of pay or status. In fact, there is no indication of any concrete damage whatsoever. Certainly, there is nothing to demonstrate an altered term or condition of employment. As a result, the complaint does not state a claim on which relief can be granted.

RECOMMENDATION

Based upon the foregoing, even assuming all its factual

allegations to be true, the complaint in this matter does not state a claim on which relief can be granted. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 12, 2001